Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

NEW JERSEY STATE TROOPERS MARK MANZO, CHRISTOPHER MODARELLI, KEITH MOYER, JOSEPH CARSON and THOMAS HOLLYWOOD,

Petitioners,

v.

STATE OF NEW JERSEY,

Respondent.

On Petition For Writ Of Certiorari To The Superior Court Of New Jersey

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Whether targets and witnesses during a grand jury investigation can waive their right to conflict-free representation when there may be some potential conflict of interest that was not articulated by the trial court.

2) Whether the holding in *Flanagan v. U.S.*, 465 U.S. 259, 104 S.Ct. 1051 (1984), applies to disqualification orders of counsel representing both targets and witnesses during a grand jury investigation.

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

NEW JERSEY STATE TROOPERS MARK MANZO, CHRISTOPHER MODARELLI, KEITH MOYER, JOSEPH CARSON and THOMAS HOLLYWOOD, individuals, on behalf of themselves and a class of all persons similarly situated, Petitioners, Appellants below;

STATE OF NEW JERSEY, Respondent, Appellees below.

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CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE

The Superior Court of New Jersey Law Division's Order and Opinion granting the State's Motion to Disqualify Kevin P. McCann, Esq. from further representation in this matter is reprinted at App. 1-15 (September 21, 2004). The Superior Court of New Jersey Law Division's Order and Opinion denying the Motion for Reconsideration is reprinted at App. 22-27 (December 3, 2004). The Superior Court of New Jersey Appellate Division's Orders granting the State's Motion to Dismiss the Appeal and denying the Motion for a Stay or Postponement of the grand jury proceedings are reprinted at App. 36-39 (February 22, 2005). The Supreme Court of New Jersey's Order denying the Motion for leave to appeal is reprinted at App. 40 (May 3, 2005).

BASIS FOR SUPREME COURT JURISDICTION

The judgment of the Superior Court of New Jersey was entered on September 21, 2004. The Order denying the Motion for Reconsideration was entered on December 3, 2004. The New Jersey Appellate Division's Orders granting the State's Motion to Dismiss the Appeal and denying the Motion for a Stay or Postponement of the grand jury proceedings was entered on February 22, 2005. The New Jersey Supreme Court denied the Motion for leave to appeal on May 3, 2005.

The present petition is timely filed pursuant to Rule 13.3 of this Court. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

Sixth Amendment To The United States Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process to obtain witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

A. Factual Background

On July 21, 2003 at approximately 9:45 p.m., Patrolman Pratt of the Magnolia Police Department in the State of New Jersey, gave directions to a white male driver driving a 1990 Honda Accord. After providing directions, he conducted an NCIC inquiry of the 1990 Honda and it revealed that the Honda had been reported stolen to the Vineland Police Department in the State of New Jersey, several hours earlier. Officer Pratt then attempted to effect a motor vehicle stop on the Honda and the Honda failed to stop. Police officers from other municipalities in New Jersey joined the pursuit which continued onto Interstate 295 southbound. The Honda crossed the median near milepost 27.7 and became disabled near the shoulder of the northbound lane, at which time the driver exited the

Honda and began to flee on foot and eventually crossed the median and ran toward the southbound lanes of traffic.

Troopers from the New Jersey State Police Bellmawr Station were notified of the pursuit and Troopers Mark Manzo, Chris Modarelli, Keith Moyer, Joseph Carson, and Thomas Hollywood responded to Interstate 295, each in their own cars. The Troopers were alerted that the driver had fled into the wooded area adjacent to the southbound lane and Troopers Manzo, Modarelli, Moyer and Carson entered the wooded area in search of the driver. Trooper Hollywood traveled southbound in an attempt to head off the suspect. Trooper Hollywood attempted to enter the woods after traveling 70 yards but a fence prevented him.

Upon entering the woods the four Troopers (Troopers Manzo, Modarelli, Moyer and Carson) had to go through a hole cut in a fence and over or under a tree which had fallen in the path. Trooper Manzo went into the woods first followed by Troopers Modarelli, Carson and Moyer, in that order. Trooper Modarelli first located the suspect and yelled that he was an officer and ordered the suspect to show his hands. The four Troopers along with a Bellmawr Police Officer formed a semi-circle around the suspect with some of the officers giving verbal commands to which the suspect did not comply. The suspect appeared to be concealing something in his waistband. All officers made the decision to fire at the same time, when the suspect quickly removed his hand from his waistband in an aggressive manner. When the shots were fired, Trooper Carson's flashlight was hit by a stray bullet causing him to fall backwards. Both Trooper Moyer and Modarelli saw Carson go down and believed he had been injured. Trooper Modarelli and Moyer emptied their clips firing 14 shots each and Trooper Moyer fired 12 shots. Trooper Carson did not